

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 PANGEA CAPITAL MANAGEMENT,  
4 LLC,

5 Petitioner,

6 v.

16 Civ. 840 (LAK)

7 JOHN R. LAKIAN,

8 Respondent.

9 New York, N.Y.  
10 February 4, 2016  
2:15 p.m.

11 Before:

12 HON. LEWIS A. KAPLAN,

13 District Judge

14 APPEARANCES

15 INGRAM YUZEK GAINEN CARROLL & BERTOLOTTI  
Attorneys for Petitioner

16 BY: EVAN R. RACITI  
CAITLIN L. BRONNER

17  
18 ALSO PRESENT: RICHARD E. CARMEN  
JUDITH R. RICHMAN  
19 BRAD E. SERLEN  
20 ROGER L. STAVIS

1 (Case called)

2 MR. RACITI: Evan Raciti for plaintiff.

3 THE COURT: Thank you.

4 MR. CARMEN: Your Honor, I'm Richard Carmen. Our firm  
5 was counsel for Mr. Lakian in the underlying arbitration.  
6 However, I'm appearing here as a courtesy. We have not been  
7 retained and engaged for the proceeding to confirm. But I'm  
8 before the Court. I received the papers from Mr. Raciti last  
9 night. As I understand, I was directed by your Honor.

10 THE COURT: We will come back to that.

11 MS. RICHMAN: We are here on behalf of Andrea Lakian,  
12 who is not a defendant, but this is her home that they are  
13 seeking to attach.

14 MR. STAVIS: Roger Stavis of the firm of Gallet Dreyer  
15 & Berkey. I'm here representing Ms. Lakian as well and my role  
16 in representing Ms. Lakian was that I was forfeiture counsel in  
17 the Eastern District case where the piece of property that's  
18 the subject of these proceedings is subject to a forfeiture in  
19 the Eastern District. So I'm forfeiture counsel in the Eastern  
20 District case.

21 THE COURT: Let me come back to what Mr. Carmen had to  
22 say. Looking around here for my copy of the local rules, the  
23 thought running through my mind is that a lawyer is either in  
24 the case or not in the case. And I understand your quandary,  
25 not having been retained. I practiced law for a long time and

1 I'm very sympathetic.

2 Are you saying you have authority to appear? Strike  
3 the word appear because it's a term of art. Authority to act  
4 on behalf of Mr. Lakian here today anyway, or not?

5 MR. CARMEN: Your Honor, if that means that I would be  
6 appearing, the answer is no, I do not, and my firm does not.

7 THE COURT: Other than the fact that you are  
8 representing him in the criminal case.

9 MR. CARMEN: Our firm is not representing him in the  
10 criminal case. We represented him in the arbitration before  
11 JAMS.

12 THE COURT: Other than that coincidence and given that  
13 you are not prepared to tell me that you have authority to act  
14 on his behalf today, why should I hear you at all?

15 MR. CARMEN: Other than to be informational, your  
16 Honor, and just say that Mr. Lakian is seeking counsel for this  
17 case. I can tell your Honor that.

18 THE COURT: You basically came as a courtesy to me to  
19 convey that information.

20 MR. CARMEN: Yes.

21 THE COURT: Now, so far as Ms. Richman and Mr. Stavis  
22 are concerned, you are authorized to act for your client,  
23 right?

24 MS. RICHMAN: Correct, your Honor.

25 MR. STAVIS: Yes, your Honor.

1 THE COURT: And your problem is she is not a party  
2 here.

3 MR. STAVIS: That's correct, your Honor.

4 MS. RICHMAN: Correct, your Honor.

5 THE COURT: Inasmuch as this is an application for a  
6 TRO and very expedited relief, I'll hear you today. But you  
7 are going to have to obtain, whether on consent or otherwise,  
8 intervention and become a party if you are to participate  
9 further beyond today because nonparties don't get to be heard.  
10 But I'll hear you today.

11 MS. RICHMAN: Thank you, your Honor.

12 THE COURT: I have a proposed order to show cause for  
13 an order of attachment and a temporary restraining order. I'm  
14 just making a note on something I marked up yesterday.

15 I guess I will hear from Mr. Raciti.

16 MR. RACITI: Thank you, your Honor. Before I begin --

17 THE COURT: The lecturn, please.

18 MR. RACITI: We move for this order to show cause  
19 because the defendant or respondent in this action is John  
20 Lakian. John Lakian has for the last several years perpetrated  
21 a significant fraud against Pangea, the petitioner in this  
22 action, and earlier this month, on February 2, an arbitration  
23 award was entered for the amount of approximately 15 and a half  
24 million dollars because of the fraudulent acts that Lakian  
25 carried out at Pangea's expense.

1 In connection with the arbitration, after the  
2 arbitration ended, Lakian was arrested by the FBI and indicted  
3 on five felony counts related to his fraud against Pangea and  
4 other victims. He has a long history of fraudulent acts in  
5 theory. It's a major concern for petitioner that the last  
6 remaining asset of Mr. Lakian's will be dissipated, it will be  
7 sold, encumbered or conveyed for no consideration, as he has  
8 done several times in the past.

9 Immediately after petitioners filed their action  
10 against Mr. Lakian, he conveyed a substantial property to a  
11 trust in his name and to that of his mistress, Ms. Lamm, and  
12 coconspirator, for no consideration.

13 THE COURT: What was the date that occurred?

14 MR. RACITI: That occurred five days after the filing  
15 of the arbitration in 2012. I believe it was June -- the exact  
16 date is in here, your Honor.

17 THE COURT: Almost four years ago.

18 MR. RACITI: Yes, your Honor. Before the underlying  
19 litigation, which led to the arbitration beginning, he owned  
20 four properties. Since that time he has sold or conveyed off  
21 three of them.

22 THE COURT: When most recently?

23 MR. RACITI: The most recent was in 2014 where he sold  
24 a 17 North restaurant for 2.5 million, which was a property  
25 that was actually a part of the underlying award due to certain

1 misconduct in that action.

2 THE COURT: I don't understand what that means. It's  
3 a property that was part of the underlying award. What does  
4 that mean?

5 MR. RACITI: Let me take a step back. I don't want to  
6 get into the nitty gritty of the award if I don't have to. I  
7 may misspeak with what the award says. It did have relevance  
8 to how he acquired the property using misappropriated funds,  
9 your Honor. I don't want to misspeak and get into it.  
10 Nonetheless, he has dissipated all but one asset, which is the  
11 Shelter Island property.

12 THE COURT: The third property, that's the one in  
13 which you are complaining of something that happened about two  
14 years ago.

15 MR. RACITI: Correct. So the first property was the  
16 one that he basically gave away to a trust that he controls.  
17 The second one was a property which he sold for \$405,000 on  
18 August 30, 2012, which was about two months after our action  
19 began.

20 THE COURT: The point of my question is this, that  
21 you've come running in here seeking a highly expedited relief  
22 starting with an ex parte application yesterday and you have  
23 not, I think, pointed to anything that's happened anything more  
24 recently than two years ago, right?

25 MR. RACITI: The major development that's happened in

1 the last two years has been the listing of the Shelter Island  
2 home and then the rapid decrease in the price of the listing  
3 asking price. It was listed for around \$18 million and has  
4 been decreased to \$11.75 million today. There is a clear  
5 urgency on the part of Mr. Lakian to dispose of the property.  
6 And in light of the fact that he was just indicted on the  
7 criminal charges and he has got a massive award against him --

8 THE COURT: Is there any information about what the  
9 fair market value of the property is?

10 MR. RACITI: I don't have that available, your Honor.

11 THE COURT: Suppose it's worth 10 million.

12 MR. RACITI: I can't speak to how much its fair value  
13 is. I can say that the timing of the decrease in price  
14 correlating to his indictment and pending his trial is  
15 scheduled for May 1. He is facing serious felony charges, not  
16 to mention a 15 and a half million dollar award against him,  
17 which we hope, your Honor, will confirm in this underlying  
18 petition to confirm. It's very likely he is trying to sell his  
19 asset as quickly as possible. And just based on history of bad  
20 behavior, we are very worried that he is going to then get rid  
21 of the asset. All we are asking for is for him not to be  
22 permitted to sell the asset at this time.

23 THE COURT: What is the ground on which you seek an  
24 order of attachment under 6201?

25 MR. RACITI: The 6201 would be the ground for

1 subsection 3, which is the basis for his attempts to frustrate  
2 any eventual judgment obtained by petitioner. So we have  
3 significant case law showing that someone who has done much  
4 less wrongdoing in fraudulent acts than Mr. Lakian would  
5 qualify under that ground.

6 Moreover, we could even substitute 6201(3) with CPLR  
7 7502, which is in aid of arbitration. We have obtained an  
8 award and we believe that without an order of attachment, it  
9 can be rendered ineffectual, which would be under 7502(c).

10 THE COURT: Give me a moment to look at that. It says  
11 that the Court may entertain an application for an order of  
12 attachment, but only upon the ground that the award to which  
13 the applicant may be entitled may be rendered ineffectual  
14 absent that relief. The provisions of articles 62 and 63  
15 apply. So to me, and correct me if you have a different view,  
16 that means that in construing 6201(3), I'm to regard an  
17 arbitration award as the equivalent of a judgment, but,  
18 otherwise, the provisions of article 62 apply, including the  
19 requirement of a likelihood of success on the issue of intent  
20 to frustrate enforcement.

21 MR. RACITI: I believe your Honor is correct that the  
22 7502(c) provision effectively replaces 6201(3) as the ground,  
23 statutory grounds --

24 THE COURT: It actually says the opposite. What it  
25 says is that article 62 applies?



1 MR. RACITI: Yes. The case law, however, interprets  
2 it as saying that the grounds under Article 62, such as having  
3 to show a likelihood of success on the underlying claim, which  
4 here would be the petition to confirm the award and showing the  
5 other requirements, such as likelihood of success, and that  
6 there aren't any counterclaims greater than our main claim.

7 THE COURT: Is it your position that the likelihood of  
8 success that you have to show is only that it's likely that the  
9 award will be confirmed or do you have to show that plus a  
10 likelihood of success on intent to frustrate enforcement?

11 MR. RACITI: I believe it's just on the fact that we  
12 are going to win the underlying claim. From what I've seen in  
13 the case law, we are going to get a judgment based on our  
14 petition to confirm, and this is a prejudgment attachment  
15 mechanism. What we have to show is, we are going to get a  
16 judgment and that is why we are moving for prejudgment  
17 attachment.

18 THE COURT: Don't you have to show an intention to  
19 frustrate enforcement?

20 MR. RACITI: Yes, your Honor. I think under 6201(3),  
21 which is independent of the in aid of arbitration under  
22 7502(c), we do show an intent to frustrate. I'll give you an  
23 example, your Honor. One moment.

24 The facts of this case are extraordinarily similar to  
25 that of Mineola Ford Sales Limited v. Rapp, which is a Second

1 Department case. There the Second Department affirmed an order  
2 of prejudgment attachment entered by the Supreme Court on the  
3 grounds that the CPLR 6201(3) was satisfied where the  
4 defendant, while an employee of the --

5 THE COURT: It's really not too helpful to me,  
6 particularly at a high rate of speed.

7 MR. RACITI: Pardon, your Honor. The takeaway, the  
8 long and short of it is, we have sufficient grounds for showing  
9 that we satisfy the grounds under 6201(3) candidly. We have an  
10 actor who has committed several systematic acts of fraud  
11 against our client specifically and then, on top of that, he  
12 has fraudulently conveyed properties after our litigation  
13 began, and all evidence points to the fact that he is  
14 attempting to sell the property at issue.

15 THE COURT: Let me just explore that for a minute to  
16 make sure we have covered all the bases. The attempt to  
17 defraud your client after the arbitration commenced, what were  
18 the acts? One was the transfer to the trust, right?

19 MR. RACITI: Yes. I would say that's the most blatant  
20 of the acts.

21 THE COURT: It's a trust revocable by him, right?

22 MR. RACITI: The trust of that transfer, it was  
23 revocable by him, but I would like to like to clarify that it  
24 is not -- yes. Let me just strike that, your Honor. It was  
25 revocable by him, correct.

1 THE COURT: Wouldn't the res of the trust, revocable  
2 by the judgment debtor, be available to satisfy the judgment?

3 MR. RACITI: I believe that is correct, your Honor.

4 THE COURT: So there is nothing about the transfer to  
5 the trust, given that it's revocable by him, that in any way  
6 impeded you as a potential judgment creditor, isn't that right?

7 MR. RACITI: In actuality you are correct.

8 THE COURT: I try to stay in the plane of actuality.

9 MR. RACITI: The point I would make is the attempt to  
10 defraud may not have been realized, even though there was an  
11 attempt.

12 THE COURT: If the transfer of the trust didn't put  
13 the property beyond the reach of a judgment creditor, by what  
14 stretch of the imagination do you say it was an intent to  
15 defraud?

16 MS. BRONNER: Your Honor, if I may, my name is Caitlin  
17 Bronner. I'm the partner who handled the underlying  
18 arbitration. If I might be heard, I can hopefully address your  
19 Honor's question.

20 THE COURT: This will be a rare exception, but go  
21 ahead. I don't believe in tag team arguments.

22 MS. BRONNER: I understand, your Honor, and I  
23 appreciate your Honor's understanding in this regard.

24 There are two trusts at issue here, your Honor. One  
25 trust is the Gems II Realty trust, which is the trust that owns

1 the property on Shelter Island that is the subject of this  
2 underlying request for TRO and attachment. The trust to which  
3 my colleague was referring is the Double L Lodge Realty Trust,  
4 the trust of which it is our understanding that Mr. Lakian and  
5 his mistress, Diane Lamm, are the trustees. Diane Lamm was a  
6 party to the underlying arbitration.

7 THE COURT: What was the property transferred to the  
8 LL Trust?

9 MS. BRONNER: The LL Trust, that was Mr. Lakian and  
10 Ms. Lamm's primary residence in North Carolina. The property  
11 located at Eagle Ridge Drive in North Carolina.

12 THE COURT: Is that trust revocable by Mr. Lakian?

13 MS. BRONNER: I don't know the answer to that, your  
14 Honor, unfortunately. We have not seen the underlying trust  
15 instrument. It wasn't provided. To finish the thought, your  
16 Honor, Ms. Lamm filed for bankruptcy protection during the  
17 course of the arbitration. To the extent that the property was  
18 transferred to a trust that we believe is controlled by  
19 Ms. Lamm, among others, Ms. Lamm is now out of the arbitration  
20 and, therefore, is not a party to the award. The award is only  
21 against Mr. Lakian.

22 Thank you, your Honor. I believe my colleague will  
23 continue.

24 THE COURT: Just to finish the thought, if that trust  
25 is revocable by Mr. Lamm, then the transfer of the North

1 Carolina property did nothing to frustrate any creditor or  
2 potential creditor, right?

3 MS. BRONNER: Well, it is our position, your Honor,  
4 that, again, the conveyance of the property to a mutual trust  
5 three days after the commencement of the antecedent state court  
6 litigation, in our view, insulated from attachment. Again, I  
7 can't speak to whether it was revocable or irrevocable, but it  
8 was our belief that it was done to frustrate creditors, such as  
9 Pangea.

10 MR. RACITI: I apologize for the tag team. One thing  
11 I did say, it was revocable is because it was revocable.  
12 Exhibit D to the order to show cause affidavit includes a copy  
13 of the trust documents which says --

14 THE COURT: For which trust?

15 MR. RACITI: For the Double L fund trust that's at  
16 issue. I can read it. The trust agreement reads: "The trust  
17 is revocable. The persons holding the power to revoke or amend  
18 the trust is John Lakian and Diane Lamm."

19 THE COURT: That's on what page?

20 MR. RACITI: It appears to be the ninth page of the  
21 Exhibit D.

22 THE COURT: There are little page numbers at top of  
23 the pages. What page number?

24 MR. RACITI: It says page 2065 on the top left, your  
25 Honor.

1 THE COURT: The persons, plural, holding the power to  
2 revoke or amend the trust is, singular, John Lakian and Diane  
3 Lamm.

4 Now, does anybody pay attention to the question of  
5 whether under the governing law, which maybe is North Carolina,  
6 I suppose, although I don't know, such a provision makes the  
7 trust revocable by either of those individuals or must they act  
8 together? And it matters a lot, doesn't it?

9 MR. RACITI: In this particular instance, absolutely,  
10 your Honor, it does matter a lot in this particular trust,  
11 unlike the trust that currently holds the property at Shelter  
12 Island, which only John Lakian is the only sole trustee and has  
13 the sole power to revoke. So there I don't believe there is  
14 any question.

15 In this instance, however, your Honor, I think your  
16 point is well taken. Just because he may have failed at  
17 frustrating the judgment doesn't mean he didn't attempt it, as  
18 his course of dealings prior to and after show.

19 THE COURT: I understand that argument. I do.

20 One alleged act of fraud is the transfer to this North  
21 Carolina trust. Is there any other?

22 MR. RACITI: After that, about a month or two after  
23 that, in August of 2012, he then sold a second property and  
24 thereafter, about a year and a half later, in February 2014, he  
25 sold the 17 North restaurant property, basically liquidating

1 all his properties --

2 THE COURT: The 2012 transfer was of what, another  
3 peace of real estate?

4 MR. RACITI: Yes, your Honor.

5 THE COURT: What happened to the proceeds? Do you  
6 know?

7 MR. RACITI: We do not know, your Honor.

8 THE COURT: Then there is a 2014 restaurant sale. Do  
9 you know what happened to the proceeds?

10 MR. RACITI: We do not, your Honor.

11 THE COURT: Anything else?

12 MR. RACITI: The final ground. We have could have had  
13 likelihood of success. I could cover that, but I don't think  
14 it requires much emphasis, your Honor. Clearly, this is a  
15 petition to confirm an arbitration award, which was a 180-page  
16 award that was entered after 12-day arbitration before --

17 THE COURT: Before justice Stephen Crane.

18 MR. RACITI: We think it would be highly unlikely that  
19 this would not get affirmed.

20 With respect to the balance of equities in this case,  
21 we have plain and simple a fraudster on one hand and then his  
22 victim on the other. We think that the TRO we are requesting  
23 will be short in nature and that the order of attachment is  
24 completely justified, given that a judgment should be soon  
25 entered by this court, and there will be no material harm

1 caused by a TRO of such a short nature. We think that the  
2 equity clearly favors petitioners here, your Honor. We think  
3 this is the perfect -- this is a case, the perfect case where  
4 prejudgment attachment is appropriate, where you have someone  
5 with a history of concealing assets, defrauding individuals,  
6 and just claimed dishonesty who is currently in the process of  
7 attempting to sell his last remaining asset. So we hope your  
8 Honor sees our point of view. That's all I have.

9 THE COURT: I understand your point of view. Thank  
10 you.

11 MR. RACITI: Thank you, your Honor.

12 THE COURT: Who is next?

13 MR. STAVIS: If the Court please, I'm Roger Stavis and  
14 I was retained to be forfeiture counsel for Andrea Lakian, the  
15 wife of John Lakian, because John Lakian was indicted in  
16 indictment 15 Cr. 0043 in the Eastern District in a case  
17 pending before Judge Block. There are two forfeiture counts in  
18 that indictment. So my role was to work with the Assistant  
19 United States Attorney in the Eastern District whose name is  
20 Whitman Knapp, III.

21 THE COURT: Probably a pretty good lawyer, judging by  
22 the genes.

23 MR. STAVIS: Excellent lawyer. And the residence on  
24 Shelter Island was the big item for the forfeiture. Mr. Knapp  
25 is aware that this residence on Shelter Island was purchased in



1 2002, before the fraud, before the plaintiff was bringing  
2 lawsuits. And then, because Mr. Knapp was aware of it, the  
3 parties were engaged in a divorce proceeding. The divorce  
4 became final in June of last year, June 2015. And Ms. Lakian  
5 was awarded 62 and a half percent of the residence on Shelter  
6 Island that the plaintiff is seeking an order of attachment  
7 for.

8 As far as Mr. Lakian, who is out on bond and subject  
9 to strict pretrial release dissipating that asset, your Honor,  
10 this is the most scrutinized piece of property that you could  
11 possibly conceive of. It's the subject of a forfeiture and  
12 it's on the radar scene for forfeiture of the United States  
13 Attorney for the Eastern District of New York. It cannot be  
14 sold by John Lakian because Andrea Lakian has a 62.5 percent  
15 interest in this property --

16 THE COURT: The title to the property is in this Gems  
17 II trust, right?

18 MR. STAVIS: Correct, your Honor.

19 THE COURT: When somebody goes to do a title search  
20 that's what's going to pop up, correct?

21 MR. STAVIS: Presumably.

22 THE COURT: So the 62 and a half percent that  
23 Ms. Lakian was awarded by the matrimonial court, in what form  
24 is that interest?

25 MR. STAVIS: The matrimonial attorney, Ms. Richman, is

1 here to answer questions specific to the matrimonial for the  
2 Court. We have the judgment.

3 THE COURT: It sort of matters because it sounds to  
4 me, although maybe I'm wrong because I don't know the first  
5 thing about matrimonial law, it sounds to me that the fee  
6 simple of the property is held free and clear by this Gems II  
7 trust and that it may well be that Ms. Lakian has been awarded  
8 an interest in the trust. And whether that's taken effect yet  
9 or hasn't taken effect, I have no idea. And I'm just testing  
10 your assertion that she has an interest in the real estate,  
11 which, as a practical matter, may in a way be true. I am not  
12 sure it's true, maybe it is, that she has got an interest in  
13 the real property per se.

14 MR. STAVIS: Yes, your Honor. The question about the  
15 specifics of the matrimonial --

16 THE COURT: And the title to the property.

17 MR. STAVIS: -- and the title to the property,  
18 Ms. Richman can speak to.

19 THE COURT: I'll be happy to hear from her.

20 MS. RICHMAN: Thank you, your Honor. I am Judy  
21 Richman representing Andrea Lakian. Our firm is representing  
22 her in the matrimonial action. The Gems II trust, which was  
23 created in 2002, when they purchased the home as the result of  
24 a sale of the former home, was taken in a nominee trust, and at  
25 that point John Lakian --

1 THE COURT: Gems II is the nominee trust. Is that  
2 what you are saying?

3 MS. RICHMAN: Correct. And John Lakian, Ms. Lakian's  
4 former husband, and Andrea Lakian are listed as the  
5 beneficiaries, as the owners on equal terms of 50 percent.

6 THE COURT: They are 50/50 beneficiaries of the trust,  
7 correct?

8 MS. RICHMAN: Correct. And of the property.

9 THE COURT: I don't understand how that works.

10 MS. RICHMAN: Because it's a real estate trust. It's  
11 a nominee trust. So, therefore, they are the true owners of  
12 the property.

13 THE COURT: You are probably way down the road in  
14 learning on this than I am. I am sure you are. But I would  
15 have thought that the whole purpose of a trust is so that the  
16 legal ownership of the real estate is in the trust and  
17 therefore in the trustee, right, and that the beneficiaries for  
18 whom the trustee holds as nominee are the Lakians. Is that the  
19 structure?

20 MS. RICHMAN: That's the structure.

21 THE COURT: They don't have a legal, as distinguished  
22 from beneficial, interest in the real estate. What they have  
23 is a beneficial interest in the trust which holds the real  
24 estate.

25 MS. RICHMAN: Correct. If the trust --

1 THE COURT: If the trust were unwound.

2 MS. RICHMAN: They would each own it as tenants in  
3 common on an equal basis. That was changed in the matrimonial  
4 case when Andrea Lakian received 62 and a half percent of the  
5 property for which she gave up enormous other rights, and  
6 Mr. John Lakian has 37 and a half percent of the property.

7 THE COURT: And this is the trust in which John Lakian  
8 has the right unilaterally to revoke. Is that correct, or not?  
9 Do I mistake that?

10 MS. RICHMAN: I think the trust says can be terminated  
11 at any time by the beneficiaries. That's a plural, which would  
12 be John Lakian and Andrea Lakian.

13 THE COURT: Where in the record do I find that trust  
14 instrument, if at all?

15 MS. RICHMAN: Exhibit G, your Honor.

16 THE COURT: Thank you for that. And the provision you  
17 are looking at, Ms. Richman, is where?

18 MS. RICHMAN: I'm just looking on page 4, your Honor.  
19 It says the trust may also be revoked and terminated by all of  
20 the then trustees.

21 THE COURT: And John Lakian is the sole trustee.

22 MS. RICHMAN: John Lakian is the sole trustee at this  
23 time. And if it were terminated, then the asset would reside  
24 62 and a half percent in Andrea Lakian's name and 37 an a half  
25 percent in her former husband's name, John Lakian.

1 THE COURT: If you are representing the buyer of the  
2 real estate, hypothetical buyer, and you find title in the  
3 trust, the title company will remand the trust instrument, the  
4 trust instrument will show that Lakian has the right to convey  
5 the property because Lakian is the sole trustee. We agree so  
6 far?

7 MS. RICHMAN: Yes.

8 THE COURT: Therefore, the prospective buyer would be  
9 presumably free and clear if he writes a check to John Lakian  
10 in his capacity as trustee of the Gems II trust, and John  
11 Lakian can deliver clear title to the property and the sale  
12 happens. And then John Lakian as trustee has a pot of money  
13 and, in theory, by virtue of the divorce judgment or agreement,  
14 settlement agreement, 62 and a half percent of that pot of  
15 money belongs to your client. Is that it?

16 MS. RICHMAN: Yes. I am not sure by the terms of the  
17 trust he could sell it without Ms. Lakian's approval.

18 THE COURT: Fair point. I have not read it all the  
19 way through either.

20 MS. RICHMAN: The judgment certainly requires that and  
21 there is also --

22 THE COURT: The judgment --

23 MS. RICHMAN: The judgment of divorce.

24 THE COURT: Requires what?

25 MS. RICHMAN: That it has attached to it the

1 settlement agreement which requires Ms. Lakian's approval on  
2 any sale, and there is also, as Mr. Stavis said, there is the  
3 forfeiture.

4 THE COURT: The forfeiture is an allegation in the  
5 indictment. That's all that is. That is not an interest in  
6 the real estate today.

7 MS. RICHMAN: Correct.

8 THE COURT: You are telling me the divorce judgment  
9 has attached to it a settlement agreement that requires  
10 Ms. Lakian's consent for Lakian to sell. Is that right?

11 MS. RICHMAN: They are both to be apprised and they  
12 are both listed. They have both executed brokerage agreements  
13 and they are both listed on such agreements for the sale of the  
14 property.

15 THE COURT: That's not the question I asked.

16 MS. RICHMAN: I understand, your Honor.

17 THE COURT: Let's pass that. Let's assume that the  
18 settlement agreement so provides. How does a prospective buyer  
19 know that there is a settlement agreement between the Lakians  
20 and that it's been incorporated in a state court divorce  
21 judgment somewhere when they run the title search?

22 MS. RICHMAN: Your Honor, I am not sure at this point  
23 that I know the answer to that other than there was a judgment  
24 filed, and I see when they do a title search, they may --

25 THE COURT: They look up the vendor/vendee index for

1 the property and they trace back and -- I never did a title  
2 search in my life and I hope never to do one. I'm pretty sure  
3 it's not going to be in my future. My understanding of it is,  
4 you would never turn up a divorce judgment in doing a title  
5 search on a piece of real estate. That's at least not what  
6 they taught me at law school.

7 Let's pass over that. Your client has a clear  
8 interest here. Let's get to that. I always just like to make  
9 sure I understand what's going on, the nitty gritty of what's  
10 going on.

11 MS. RICHMAN: To go back to the preceding acquisition  
12 of the property, before Ms. Lakian and John Lakian acquired the  
13 property in 2002, they did this by selling a former marital  
14 residence. This became their marital residence, long before  
15 apparently Pangea ever met Mr. Lakian. And thereafter there  
16 was a divorce proceeding, quite a contentious divorce  
17 proceeding, which was --

18 THE COURT: I would guess that.

19 MS. RICHMAN: Which was settled. They had a great  
20 deal of property. Unfortunately, there is no longer a great  
21 deal of property. And my client, Andrea Lakian, who is the  
22 true victim of anything that John Lakian did with Ms. Lamm, my  
23 client had one asset left, which was her marital home. That  
24 marital home, as part of the divorce, was awarded through a  
25 settlement confirmed by the matrimonial court filing the

1 judgment with 62 and a half percent plus \$75,000 of the  
2 property. And therefore if there is going to be any  
3 proceedings regarding the property and Mr. Lakian, it should  
4 only be with respect to his interests, not Andrea Lakian's  
5 interest in property which she has had for many years. She was  
6 married to Mr. Lakian for almost 40 years. She has been  
7 deprived of money. She has been humiliated. She has been hurt  
8 in any number of ways. This is all she has left. She gave up  
9 claims for waste of marital assets. She gave up claims for  
10 support. She gave up claims for many, many things she was  
11 entitled to for this little piece of the marital estate. As I  
12 say, this piece of the marital estate was acquired long before  
13 any claims of Pangea ever came to light, long before, I  
14 believe, Mr. Lakian ever met the people from Pangea.

15 Anything that is done in this case with respect to  
16 Pangea and John Lakian should not in any way prohibit my client  
17 from receiving the proceeds that she is entitled to. The house  
18 has been on the market. The government was aware it was on the  
19 market. The matrimonial court was aware it was on the market.  
20 Everybody was aware it was on the market. It is on the market.  
21 It's been on the market for 11.7 million, I believe. It hasn't  
22 sold. Nobody is running to destroy or take the property away.  
23 It has been on the market at a price that independent real  
24 estate brokers, to my understanding, recommended. Whether it  
25 will be sold for 10 million or 11 million, I hope, or anything



1 in between, that will be a subject for a fair market value.  
2 But it is her property that they are trying to attach, not Mr.  
3 Lakian's. And she is not a defendant, she is not a party to  
4 this. And by the way, she has a judgment. They do not. It is  
5 a very substantial issue.

6 THE COURT: They are quite likely to have a judgment  
7 in a matter of days or weeks.

8 MS. RICHMAN: Certainly so. But not against  
9 Ms. Lakian.

10 THE COURT: No, of course not.

11 Well, the interesting question that this all leads to,  
12 I think, may be whether John Lakian's interest in the real  
13 estate in his capacity as trustee, as distinguished from his  
14 beneficial interest in the trust, which he owns in his personal  
15 capacity, is property subject to attachment at the behest of  
16 the judgment creditor of John Lakian in his individual  
17 capacity.

18 MS. RICHMAN: If the trust was terminated, which they  
19 could do at any time.

20 THE COURT: If the trust is terminated, then what  
21 happens is, I imagine, that the property then becomes owned by  
22 the Lakians as tenants in common in the proportion of 62 and a  
23 half percent and 37 and a half percent, and then the property  
24 can't be sold without both concurring, although the interest of  
25 John Lakian in the property probably could be attached. But

1 it's a fractional interest. I think that's the way it sorts  
2 out. Isn't it?

3 MS. RICHMAN: I agree, your Honor.

4 THE COURT: Where does this all get us? It gets us  
5 that I'm not sure that this real estate is subject to  
6 attachment for the debts of John Lakian because I'm not sure  
7 whether under 6202 of the CPLR it's property against which a  
8 money judgment against John Lakian could be enforced. It's  
9 held in a different capacity. I don't know the answer. I have  
10 a good idea what the answer is, but it's untested.

11 MS. RICHMAN: I agree, your Honor.

12 MR. RACITI: Do you mind if I interject, your Honor?

13 THE COURT: I don't mind.

14 MR. RACITI: This is an interesting question that I've  
15 had the liberty of exploring in depth through my research. And  
16 there is a clear answer on the EPTL Section 10-10.1. So New  
17 York law provides that where a --

18 THE COURT: 10 dash what?

19 MR. RACITI: 10.6.

20 THE COURT: 10-10.6. Ok. I'll try to follow along  
21 here.

22 MR. RACITI: The quote is from the EPTL.

23 THE COURT: This is the first time estates, powers and  
24 trusts law has been cited before me in 24 years.

25 MR. RACITI: Where a creator reserves an unqualified

1 power of revocation, he remains the absolute owner of the  
2 property disposed of so far as the rights of his creditors or  
3 purchasers are concerned, the absolute owner of the property.

4 Here Lakian is the settler of the trust. He is the  
5 one who gave the property to the trust in a conveyance, for no  
6 consideration. He is also the sole trustee of the trust. He  
7 also retains the power to revoke the trust. There is no  
8 question that he remains the absolute owner of that property.

9 Moreover, in EPTL 7-3.1 --

10 THE COURT: Before we get to that one, let me try to  
11 stay with you. Let's move on to your next section. What is  
12 your next section?

13 MR. RACITI: The next section is Section 7-3.1(a),  
14 which reads: A disposition in trust for the use of the creator  
15 is void as against the existing or subsequent creditors of the  
16 creator.

17 THE COURT: What does the phrase "for the use of the  
18 creator" mean?

19 MR. RACITI: It means if he retains a beneficial  
20 interest in the trust -- from the perspective of a creditor, it  
21 is void, and it does not provide any asset protection under New  
22 York law. It's a well-settled principle. Both these  
23 provisions would hold that the trust has no impact in terms of  
24 hiding the assets from the reach of creditors for attachment or  
25 execution purposes.

1 THE COURT: How is the title to the property held  
2 before it was transferred into the trust?

3 MR. RACITI: Purely in John Lakian's name. Only John  
4 Lakian, not Andrea Lakian. Andrea Lakian has never owned any  
5 title to the property, ever. She doesn't even have a  
6 beneficial interest in the trust, assuming it wasn't void  
7 because she --

8 THE COURT: She does by virtue of the divorce decree.

9 MR. RACITI: Which is subsequent. Because the  
10 revocable trust, she doesn't have a vested interest in the  
11 property because John Lakian as trustee could revoke the trust  
12 at any time, take the property back in his own name, and she  
13 would have no say in it. She doesn't have a vested interest.  
14 If the trust still exists, she still does not have a beneficial  
15 interest in the property. It's not vested.

16 THE COURT: Thank you. Have a seat.

17 MS. RICHMAN: Your Honor, that's simply incorrect.  
18 This property was bought in one day, transferred to the trust.  
19 She was named on the trust, 2002, that day. Andrea Lakian and  
20 her former husband, John Lakian, took the property together.  
21 It was not his property. It was their property.

22 THE COURT: Who was the contract vendee at the time  
23 they bought the property?

24 MS. RICHMAN: I think it was John Lakian probably and  
25 Andrea Lakian because it was a simultaneous transfer.

1 THE COURT: That probably doesn't cut it.

2 MS. RICHMAN: It was all in one real estate closing.

3 THE COURT: That may be. What did the deed say?

4 MR. RACITI: It's exhibited, your Honor. It says John  
5 Lakian was the transfer.

6 THE COURT: What is the exhibit?

7 MR. RACITI: It is Exhibit F, your Honor.

8 THE COURT: This is the wrong deed. This is the deed  
9 from Lakian to Lakian as trustee and it shows that he was the  
10 contract vendor, as it were. But I'm talking about the deed  
11 from the predecessor in interest to either or both of the  
12 Lakians.

13 MR. RACITI: I guess I'm not following your Honor.

14 THE COURT: Who owned the property before the Lakians  
15 bought it?

16 MR. RACITI: I don't know, your Honor.

17 THE COURT: My question is, where is the deed by which  
18 that owner parted with title in favor of one or more  
19 titleholders? It may be that the deed was Charlie Jones to  
20 John Lakian and it may have been Charlie Jones to John Lakian  
21 and Andrea Lakian, if that's the correct name. I hope so.

22 MR. RACITI: Wouldn't her name have to be signed off  
23 on the deed from John Lakian to --

24 THE COURT: Unless there was an intervening transfer.  
25 There is some evidence, but there is a chain of title here and

1 it's not hard to find it.

2 Anything else, Ms. Richman?

3 MS. RICHMAN: The only other thing -- I want to  
4 correct a misstatement -- the trust itself, Gems II trust says:  
5 The entire beneficial interest of this trust shall be vested in  
6 the persons named in a schedule of beneficial interest of even  
7 date, signed by the trustee and the beneficiaries in the  
8 properties therewith set forth. And those names are John  
9 Lakian and Andrea Lakian. It is not just John Lakian.

10 THE COURT: Counsel may have a point about the effect  
11 of the EPTL.

12 Is there anything new I need to hear? Because it's a  
13 busy day. And it's important, I understand that. And we have  
14 certainly spent some time reviewing our first year of law  
15 school here. But it's important to resolution.

16 I think the answer is, for present purposes, that I am  
17 going to grant the temporary restraining order. This is fuzzy  
18 enough that I ought to freeze everything and we will sort this  
19 out. It's going to include the order of attachment.

20 Just refresh my recollection about the procedure under  
21 article 62. My memory is that where I grant without notice,  
22 which is not this case, a motion to confirm has to be made  
23 within five days. What happens where I grant on notice?

24 MR. RACITI: I don't want to misspeak, your Honor.  
25 I'm sorry for guessing, guessworking here, but I don't believe

1 we have to confirm --

2 THE COURT: That's my question to you. Let me take a  
3 look at the statute.

4 MR. RACITI: I apologize.

5 THE COURT: I think that may well be right. I am  
6 going to grant the TRO and I am going to grant the order of  
7 attachment. I am going to grant the order of attachment under  
8 6201(3) and under 7502 of the CPLR. I think that the  
9 circumstantial evidence permits me to find a probability of  
10 success on the merits of confirmation of the award, a  
11 probability of success on the proposition that there is the  
12 intention to sell, and to do so with intent to defraud  
13 creditors. And, in any event, referring specifically to  
14 7502(c), probability of success that such a transfer would be  
15 likely to render the arbitration award ineffectual in whole or  
16 in part. I view those as alternative grounds. There is  
17 certainly cause of action. The amount demanded from the  
18 defendant exceeds all counterclaims owed to the plaintiffs.

19 I have made the requisite findings. Does anybody else  
20 think I have not addressed any finding that is necessary to  
21 issue this relief?

22 The record will reflect that all counsel are silent.

23 Now, this will bring on a motion for a preliminary  
24 injunction because the TRO -- I take that back. The TRO would  
25 have been only pending a hearing and determination on the order

1 of attachment, which I have ruled on. So I will cross out the  
2 TRO on the ground that it is superfluous.

3 Bond undertaking. Anyone want to address that?

4 MS. RICHMAN: Your Honor, may I say, I understand this  
5 is on notice. We were informally given notice this morning at  
6 approximately 10:00.

7 THE COURT: You are not parties.

8 MS. RICHMAN: Right. That's true. Is an attachment  
9 to John Lakian's interest the defendant's interest?

10 THE COURT: The attachment is of the property. Now,  
11 obviously, the defendant has the right to move to vacate the  
12 order of attachment or to modify it and if Ms. Lakian wants to  
13 intervene and seek some relief, she is welcome to try to do  
14 that without in any way binding myself or suggesting that I  
15 wouldn't consider it de novo in such an application before me.  
16 She seems to me obviously to be in a position in which she has  
17 rights that may be affected here and that she probably has a  
18 right to intervene, and I would probably in any case allow her  
19 to intervene and I rather suspect that the petitioner would  
20 consent to intervention, right, Mr. Raciti?

21 MR. RACITI: Yes, your Honor.

22 THE COURT: If there is an application, it's not going  
23 to be opposed with respect to intervention. And Ms. Lakian can  
24 file any application she wants if she feels she needs further  
25 application.



1           What about an undertaking?

2           MR. RACITI: I believe the CPLR provides that an  
3           undertaking of \$500 would be required. I think that's  
4           appropriate given the relative positions of the parties here,  
5           one being the respondent who is in this position because of his  
6           fraud and acts of dishonesty and the victim who, honestly,  
7           can't afford a very high undertaking, given the amount of money  
8           he has expended to go through the arbitration and the amount of  
9           money he has lost as a result of the fraud that he has fallen  
10          victim to. This is one of the circumstances where the minimum  
11          would be appropriate.

12          MR. STAVIS: The interest of the proposed intervenor,  
13          Ms. Lakian, would be a lot higher than \$500, your Honor.

14          THE COURT: But the question is this. In what way  
15          could she potentially be damaged by virtue of the attachment of  
16          the property? Go ahead.

17          MR. STAVIS: Yes. It would prevent the sale of the  
18          property, your Honor. And the sale of the property is  
19          virtually the only thing that she received from the judgment of  
20          divorce. There was no maintenance, your Honor. It was all  
21          wrapped up in this piece of property, your Honor.

22          THE COURT: It would prevent the sale of the property  
23          absent her consent, right?

24          MR. STAVIS: This is an order of attachment now, your  
25          Honor. Your Honor has ruled. I understand that. This is the

1 most scrutinized piece of property. You have a person on  
2 pretrial release. The U.S. Attorney is after it. Both parties  
3 have to consent. The broker has both parties. It cannot be  
4 sold out from under John Lakian.

5 THE COURT: Let's back up. I have granted an order of  
6 attachment on the real property. I've done it on the ground or  
7 the theory that by virtue of the EPTL provisions that Mr.  
8 Raciti cited, there is a substantial possibility that  
9 Mr. Lakian, by revoking the trust, could wind up with the sole  
10 interest in the proceeds of the sale and the right to sell.

11 MR. STAVIS: That's not what the trust provides, your  
12 Honor.

13 THE COURT: I heard the whole argument. I did.

14 Now, it may well be that there is a substantial  
15 argument that the property shouldn't be attached, the real  
16 estate, on the ground that Lakian's interest in the real estate  
17 is held in a fiduciary capacity, not a personal capacity, and,  
18 therefore, couldn't be applied to satisfaction of the judgment.  
19 And maybe that's a ground to modify or vacate the attachment.

20 But my purpose today is to freeze the status quo and  
21 you will have every opportunity to be heard on these  
22 interesting issues, which are complicated and which neither  
23 side recognized coming in here, although maybe Mr. Raciti did,  
24 but he certainly didn't put them on the table. I'm not  
25 criticizing. It's just the way it is. And I had not had a

1 chance to think about it before they occurred to me in the  
2 courtroom. And so I'm in a position where I need ultimately  
3 some help on this.

4 And I'm extremely sensitive to Ms. Lakian's position.  
5 And it's a hard question. What I'm really concerned about is  
6 that we wake up here on Monday morning and find out, and I  
7 don't mean Monday morning literally, but I wake up soon and  
8 find out he is revoked, he is conveyed and the money is gone.  
9 That's not an inconceivable hypothesis here. It's maybe not  
10 super likely, but it's possible. There is enough reason to be  
11 concerned that it will happen that I think in everybody's  
12 interest, including Ms. Lakian's, it's very important that I  
13 stop that until we sort this all out. She certainly doesn't  
14 want to wake up and find out that Mr. Raciti is right and that  
15 Lakian has sold the property out from under the divorce decree.  
16 That's the worst of all possible worlds for both her and the  
17 plaintiff. That's what I'm trying to accomplish.

18 Let me address the order. I think I've got to revise  
19 the order all together because it's actually no longer an order  
20 to show cause because there is no motion at this point. It is  
21 an order of attachment granted on notice. And so I will recast  
22 it and, believe me, you will get expedited service if there is  
23 a motion. It's just that we all have to back up and think this  
24 through. It's complicated piece of real estate and trust law  
25 mixed in with the matrimonial decree. This will give everybody

1 the chance to breathe and figure it out.

2 I'll try to get that order signed before I leave  
3 today.

4 Anything else, folks?

5 MR. RACITI: No. Thank you, your Honor.

6 THE COURT: Thank you.

7 MR. CARMEN: Your Honor, in terms of the response to  
8 the petition, just informationally, that's left open. I'm  
9 sorry to interrupt.

10 THE COURT: It is whatever the summons says.

11 MR. CARMEN: There is no date, your Honor.

12 THE COURT: Doesn't the summons say 20 days? There  
13 had to be a summons.

14 MR. CARMEN: It was a notice of petition, your Honor.

15 THE COURT: Notice of petition.

16 MR. CARMEN: That's it.

17 THE COURT: Notice of petition. Did you serve it?

18 MR. CARMEN: That's what was filed.

19 MR. RACITI: The notice of petition has not yet been  
20 served. It was filed yesterday before I came to chambers, your  
21 Honor, and it's going to be served tomorrow before Mr. Lakian's  
22 critical proceeding.

23 THE COURT: I don't think you can start a federal case  
24 without a summons. Maybe I'm wrong.

25 MR. RACITI: We checked with the clerk's office on

1 this, your Honor.

2 THE COURT: That's always a mistake. I'm not kidding.  
3 They do a great job, but they are not Wright & Miller on  
4 federal practice. That's not their job. You are the guy that  
5 went to law school, not the poor GS11 in the clerk's office. A  
6 civil action is commenced by filing a complaint with the court,  
7 not a notice of petition.

8 MR. RACITI: I'm sorry, your Honor. I don't mean to  
9 cut you off like that. We did file a complaint with the Court,  
10 a notice of petition. All of that was filed yesterday and I  
11 thought we gave you a courtesy copy yesterday as well. It was  
12 all filed and uploaded to ECF yesterday: Exhibits, affidavit,  
13 the petition, everything.

14 THE COURT: You have to get a summons and serve a  
15 summons. To use a technical term, without the summons, you've  
16 got bupkus.

17 MS. BRONNER: Your Honor, it's our understanding that  
18 it takes 24 hours for the summons to be generated.

19 THE COURT: Since when?

20 MS. BRONNER: That was what was advised by my process  
21 server.

22 THE COURT: Maybe it does in your office. Rule 4(b)  
23 says: On or after filing the complaint, the plaintiff may  
24 present a summons to the clerk for signature and seal.

25 It takes you 24 hours to do that?

1 MS. BRONNER: We apologize, your Honor. The summons  
2 is going to be served on Mr. Lakian tomorrow.

3 THE COURT: Good plan. I don't mean to be harsh. For  
4 God's sake, it's a federal court. It's not 60 Centre Street.

5 MS. BRONNER: Understood, your Honor.

6 THE COURT: Thank you.

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